

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JERRY LEE GWIN,)
Petitioner,)
v.) CIVIL ACTION NO. 00-PT-0152-S
WARDEN THOMAS and THE)
ATTORNEY GENERAL OF THE)
STATE OF ALABAMA,)
Respondents.)

U.S. DISTRICT COURT
NORTHERN ALABAMA

ENTERED

DEC 22 2000

MEMORANDUM OPINION

The petitioner, Jerry Lee Gwin, filed his habeas corpus petition in this court on January 19, 2000. After an examination of the record, the magistrate judge assigned this matter concluded that the petition was barred by the applicable statute of limitations in 28 U.S.C. § 2244(d). (Doc. 11). The petitioner filed an objection, asserting that his present petition is not time barred because he timely filed his state post-conviction petition pursuant to Rule 32 of the ALABAMA RULES OF CRIMINAL PROCEDURE.

Although the petitioner is correct that his state post-conviction petition appears to have been timely filed under Rule 32, by the filing date, his federal statute of limitations had already run. Because the federal limitations period had already expired, the timely filing of the Rule 32 petition is not sufficient to allow consideration of the present federal petition.

The court has considered the entire file in this action, including the Magistrate Judge's Report and Recommendation and the petitioner's objection thereto, and has reached an independent conclusion that the Magistrate Judge's Report and Recommendation is due to be adopted and approved. The court hereby adopts and approves the findings and recommendation

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of the magistrate judge as the findings and conclusions of the court. In accord with the recommendation, this petition for writ of habeas corpus is due to be and is hereby dismissed. An appropriate order will be entered.

DONE, this 25th day of December, 2000.



ROBERT B. PROPST
UNITED STATES DISTRICT JUDGE